Appendix A

FCC 67-795
2227

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

IN THE MATTER OF Amendment of Part 73 of the Rules to provide procedures in the event of a personal attack or where a station editorializes as to political candidates.	Docket No. 16574

MEMORANDUM OPINION AND ORDER

Adopted July 5, 1967 ; Released July 10, 1967

By the Commission:

Commissioner Bartley dissenting and issuing a statement;
Commissioner Loevinger concurring and issuing a statement;
Commissioner Wadsworth absent.

1. On April 6, 1966 the Commission adopted a Notice of Proposed Rule Making (FCC 66-291) to provide procedures in the event of certain personal attacks and where a station editorializes as to political candidates. This Notice was published in the Federal Register of April 13, 1966 (31 Fed. Reg. 5710). Upon the request of the National Association of Broadcasters, the time for filing comments and reply comments was extended to June 20 and July 5, 1966, respectively (31 Fed. Reg. 6838, May 7, 1966).

2. Comments were timely filed by Carrol M. Barringer (WLCO), Bedford Broadcasting Corp. (WBIW), *et al.*,[1] Cape Fear Telecasting, Inc., Colorado Broadcasters Association, Columbia Broadcasting System, Inc., Corinthian Television Corp., *et al.*, Golden Empire Broadcasting Co., Griffin-Leake TV, Inc., Interstate Broadcasting Co., Meridith Broadcasting Co., Mutual Broadcasting System, Inc., Mission Broadcasting Co., National Association of Broadcasters, National Broadcasting Co., Inc., Storer Broadcasting Co., Trigg-Vaughn Stations, Inc., WIBC, Inc., and WPSD-TV, generally in opposition to the rules. Comments favoring the rules were received from the American Civil Liberties Union,[2] Joseph H. Chislow, International Typographical Union (AFL-CIO), Laborers' International Union of North America (AFL-CIO), National Council of the Churches of Christ, National Rifle Association of America, The Pacifica Foundation, and the United Steel Workers of America, AFL-CIO.

3. The purpose of embodying the procedural aspects of the Commission's long-adhered-to personal attack principle and political editorial policy in its Rules is twofold. It will clarify and make more precise the obligations of

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[1]On July 8, 1966, Bedford Broadcasting Corp., *et al.*, submitted, together with a motion to accept the Addendum, an Addendum to their comments, consisting of excerpts from an "Economic Analysis of Competition in the Daily Newspaper Business," prepared by Jessee Markham, Professor of Economics, Princeton University. No reason was given for the failure to submit the material in a timely fashion. The motion to accept the addendum is denied. (47 C. F. R. 1.415(d)).

[2]The informal comments submitted by the A. C. L. U. reflect an apparent mis-reading of the proposed rules in that the comments state the "rule-making specifically exempts personal attacks in the context of the discussion of controversial issues . . ." In fact this is the situation expressly covered by the proposed rules.

broadcast licensees where they have aired personal attacks and editorials regarding political candidates. Further, in the event of failure to comply with these rules, the Commisison will be in a position to impose appropriate forfeitures (§ 503(b) of the Act) in cases of clear violations by licensees which would not warrant designating their applications for hearing at renewal time or instituting revocation proceedings but on the other hand do warrant more than a mere letter of reprimand. Of course, pursuant to § 503(b) of the Act, only the willful or repeated violation of these rules can result in forfeiture. We stress that the personal attack principle is applicable only in the context of the discussion of a controversial issue of public importance. See par. 10, *infra*.

4. These rules will serve to effectuate important aspects of the well established Fairness Doctrine; they do not alter or add to the substance of the Doctrine.[3] As set forth in the 1949 *Report of the Commission in the Matter of Editorialization by Broadcast Licensees, 13 F. C. C. 1246 at 1249 (1949)*, "the development of an informed public opinion through the public dissemination of news and ideas concerning the vital public issues of the day" is the keystone of the Fairness Doctrine. "It is this right of the public to be informed, rather than the right on the part of the government, any broadcast licensee or any individual member of the public to broadcast his own particular views on any matter, which is the foundation stone of the American system of broadcasting." *Ibid.* The Fairness Doctrine as a basic delineation of a standard of public interest in

[3]The only new requirement in these rules are the time limits, discussed in paragraphs 12 and 15, *infra*, within which licensees must act to fulfill their substantive obligations when they have broadcast personal attacks or political editorials.

broadcasting was given specific Congressional approval in the 1959 amendment of Section 315(a) of the Communications Act, 73 Stat. 557, 47 U. S. C. 315(a). The personal attack principle is simply a particular aspect of the Fairness Doctrine. The principle stems from the Commission's language in the 1949 *Report* that "elementary considerations of fairness may dictate that time be allocated to a person or group which has been specifically attacked over the station . . ." 13 F. C. C. 1252. The standard of fairness similarly dictates that where a licensee editorializes for or against a candidate the appropriate spokesman for the conflicting point of view is the opposed candidate's representative, or, if the licensee so chooses, the candidate himself. "These concepts, of course, do restrict the licensee's freedom to utilize his station in whatever manner he chooses but they do so in order to make possible the maintenance of radio as a medium of freedom of speech for the general public." 1949 *Report, supra,* 13 F. C. C. 1250.

5. Several of the parties contend that the Fairness Doctrine and the personal attack principle are unconstitutional infringements of broadcasters' rights of free speech and free press under the First Amendment. We believe these contentions are without merit. We have discussed the constitutionality of the fairness doctrine generally in the *Report on Editorialization,* 13 F. C. C. 1246-1270. "We adhere fully to that discussion, and particularly the considerations set out in paragraphs 19 and 20 of the Report." *Letter to John H. Norris* (WGCB), 1 F. C. C. 2d 1587, 1588 (1965). The court in reviewing the constitutonality of the personal attack principle of the Fairness Doctrine in *Red Lion,*[4] concluded "that there is no abrogation of the

[4] *Affirmed sub. nom. Red Lion Broadcasting Co., Inc.* v. *F. C. C.,* Case No. 19,938, D. C. Cir. (June 13, 1967).

petitioners' [licensees'] free speech right . . . I find in the Fairness Doctrine a vehicle completely legal in its origin which implements by use of modern technology the 'free and general discussion of public matters [which] seems absolutely essential for an intelligent exercise of their rights as citizens,' *Grosjean* v. *American Public Press, supra* at 249." *Red Lion, supra,* at 41. As to these particular rules, we stress again that they do not proscribe in any way the presentation by a licensee of personal attacks or editorials on political candidates. They simply provide that where he chooses to make such presentations, he must take appropriate notification steps and make an offer for reasonable opportunity for response by those vitally affected and best able to inform the public of the contrasting viewpoint. That such rules are reasonably related to the public interest is shown by consideration of the converse of the rules—namely operation by a licensee limited to informing the public of only one side of these issues, i.e., the personal attack or the licensee's editorial.[5]

6. The addition of Section 73.123(a), (b) (and also 73.300-FM; 73.598—Educational FM; 73.679-TV of identical language) to the Rules serves to codify what has long been the Commission's interpretation of the personal attack aspect of the Fairness Doctrine. *Report on Editorialization by Broadcast Licensees,* 13 F.C.C. 1246, 1258 (1949); *Clayton W. Mapoles,* 23 Pike & Fischer, R.R. 586 (1962); *Billings Broadcasting Co.,* 23 Pike & Fischer, R. R. 951 (1962). "Thus, we have repeatedly stated that when a li-

[5]In situations not involving a personal attack or an editorial on a political candidate, the licensee may of course exercise his good faith reasonable judgment as to the appropriate spokesman for a contrasting point of view which the licensee determines should be presented. 1949 *Report, supra,* 13 F. C. C. at 1251.

censee, in connection with its coverage of a controversial issue, broadcasts a personal attack on an individual or organization, it must 'transmit the text of the broadcast to the person or group attacked . . . either prior to or at the time of the broadcast, *with a specific offer of his station's facilities for an adequate response.*' Public Notice of July 26, 1963; Controversial Issue Programming, F. C. C. 63-734 (emphasis supplied)." *Springfield Television Broadcasting Corp.*, 4 Pike & Fischer, R. R. 2d 681, 685 (1965). This duty devolves upon the licensee, because other than in the case of a broadcast by political candidates, the licensee is responsible for all material broadcast over his facilities.

7. As the Notice pointed out, the Commission has set forth the obligation of a licensee when a personal attack occurs during the discussion of a controversal issue of public importance, i.e., the licensee must notify the individual or group attacked of the facts, forward a tape, transcript or accurate summary of the personal attack, and extend to the individual or group attacked an offer of time for the broadcast of an adequate response. See *Clayton W. Mapoles*, 23 Pike & Fischer, R. R. 586 (1962); *Billings Broadcasting Co.*, 23 Pike & Fischer, R. R. 951 (1962); *Times-Mirror*, 24 Pike & Fischer, R. R. 404 and 407 (1962); and *Springfield Television Broadcasting Corp.*, 4 Pike and Fischer, R. R. 2d 681, 685 (1965); *Radio De Land, Inc. (WJBS)*, 1 FCC 2d 935 (1965). We notified all licensees of their responsibility in this respect, by transmitting to them the July 26, 1963 Public Notice (FCC 63-734) and the 1964 Fairness Primer, *supra*. Despite such notification and the Commission's rulings, the procedures specified have not always been followed, even when flagrant personal attacks have occurred in the context of a program dealing with a controversial issue. It is for this reason that we now

codify the procedures which licensees are required to follow in personal attack situations. These rules will in no way lessen the force and effect of the Fairness Doctrine as it obliges licensees who permit their facilities to be used for the discussion of controversial issues of public importance to afford a reasonable opportunity for the presentation of conflicting views. Nor do they detract in any manner from a licensee's duty not to "withhold from expression over his facilities relevant news or facts concerning a controversery or . . . slant or distort the presentation of such news." *Report on Editorialization, supra.*

8. The obligation for compliance with these rules is on each individual licensee as it is for compliance with the Fairness Doctrine generally. *Capitol Broadcasting Co.*, 2 Pike & Fischer, R. R. 2d 1104 (1964). Where a personal attack or editorial as to a candidate on a network program is carried by the licensee, the licensee may not avoid compliance with the rules merely because the attack or editorial occurred on a network program. Of course, if the network provides appropriate notice and opportunity for response and the licensee carries such response, its obligation would be satisfied.

9. A major purpose of the rules is to clarify and make more precise the procedures which licensees are required to follow in personal attack situations. The long-applied standard of what constitutes a personal attack remains unaffected by this codification:

> [T]he personal attack principle is applicable where there are statements, in connection with a controversial issue of public importance, attacking an

> individual's or group's *integrity, character, or honesty* or like personal qualities, and not when an individual or group is simply named or referred to. *Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance,* Public Notice of July 1, 1964, footnote 6.

Thus, no matter how strong the disagreement as to views may be, the personal attack principle is not applicable (See *Letter to Pennsylvania Community Antenna Television Association, Inc.,* 1 FCC 2d 1610); it becomes applicable only where in the context of the discussion of a controversial issue of public importance, there is an attack on an individual's or group's integrity, etc., as noted above. As stated in the Notice of Proposed Rule Making, we recognize that in some circumstances there may be uncertainty or legitimate dispute concerning some aspects of the personal attack principle, such as whether a personal attack has occurred in the context of a discussion of a controversial issue of public importance, or whether the group or person attacked is "identified" sufficiently in the context to come within the rule. The rules are not designed to answer such questions. When they arise, licensees will have to continue making good faith judgments based on all of the relevant facts and the applicable Commission interpretations.[6] As we stated

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[6]In appropriate cases, licensees can and should promptly consult the Commission for interpretation of our rules and policies.

This would be the appropriate procedure should there arise a question of the applicability of the principle to a factual situation, such as the hypothetical one posed by the National Broadcasting Company's comments, of an attack made in the context of a discussion of controversial issue of public importance, which does not itself constitute such an issue. We note that in our experience thus far, the attack made in the context of the controversial issue has been germane to the issue.

in the Notice of Proposed Rule Making, the rule will not be used as a basis for sanctions against those licensees who in good faith seek to comply with the personal attack principle. We point out that in the analogous case of the equal opportunities provision of Section 315, we have not employed sanctions in the situation where a licensee has a good faith, reasonable doubt as to the provision's applicability. The rules here are thus directed to situations where the licensees do not comply with the requirements of the personal attack principle as to notification and offer of time to respond, even though there can be no reasonable doubt under the facts that a personal attack has taken place (e.g., a statement in a controversial issue broadcast that a public official or other person is an embezzler or a Communist). Statements that the rules will discourage, rather than encourage, controversial programming ignore the fact that the rules do no more than restate existing substantive policy—a policy designed to encourage controversial programming by insuring that more than one viewpoint on issues of public importance are carried over licensees' facilities. See footnote 3, *supra*. Further, we do not perceive any discouragement to controversial issue programming, except for a licensee who wished to present only one side of such programming—namely, the personal attack and not the response by the individual attacked.

10. Several of the comments in this proceeding indicate the mistaken impression that an attack on a specific person or group constitutes, itself, a controversial issue of public importance requiring the invocation of the Fairness Doctrine. This misconceives the principle, based on the right of the public to be informed as to the vital issues of the day, which requires that an attack must occur within the context

of a discussion of a controversial issue of public importance in order to invoke the personal attack principle. The use of broadcast facilities for the airing of mere private disputes and attacks would raise serious public interest issues, but such issues are not the focus of the Fairness Doctrine.

11. Under the principle it has always been the duty of a licensee to forward to a person or group attacked notification of the attack and an offer of an opportunity to respond, rather than to await a request or complaint from the person attacked. The notification requirement is of the utmost importance, since our experience indicates that otherwise the person or group attacked may be unaware of the attack, and thus the public may not have a meaningful opportunity to hear the other side. Again the rule adds no new burden in this respect to the obligations of a broadcast licensee. If an unawareness of this obligation presently exists among licensees despite the Commission's language in *Mapoles, Billings, Times-Mirror, Springfield Television,* The Public Notice of July 25, 1963, and the 1964 Fairness Primer, this only highlights the need for the rule.

12. Paragraph (a) of the rule places specific procedural responsibilities on the licensee over whose facilities a personal attack has been broadcast. A licensee is required to send the attacked person or group, within a reasonable time and in no event later than one week after the attack, a notice of the attack which states when the attack occurred and contains an offer of a reasonable opportunity to respond. Along with the notice, he is required to send a tape, transcript or accurate summary of the attack to the attacked person or group. This time limit should be sufficient to allow a licensee to confer with counsel or with the Commission if

there is doubt as to its obligation. In any event, in the doubtful situation, if the person who possibly has been attacked is notified promptly within the time limit and the licensee seeks clarification of his obligation from his counsel or the Commission, no sanctions would be imposed, because the matter is not finally resolved within the one week period. See par. 9, *supra.*[7] This one week outer time limit does not mean that such a copy should not be sent earlier or indeed, before the attack occurs, particularly where time is of the essence. Other matters are left to the reasonable judgment of the licensee, good faith negotiations, and the Commission's interpretive rulings based on specific factual situations.[8]

13. As we pointed out in the Notice, following present policy (Public Notice of July 1, 1964, (Fairness Primer) FCC 64-611, 29 F. R. 10415, footnote 6) personal attacks on foreign groups or foreign public figures are excluded from coverage by the rule. Also excluded from coverage are personal attacks made by political candidates, their authorized spokesmen, or those associated with them in the campaign against other candidates, spokesmen, or persons associated with them in the campaign. The exclusion of attacks by candidates against other candidates recognizes that the "equal opportunities" provision of Section 315—

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[7]As we stated in the Notice of Proposed Rule Making, where a licensee determines that a personal attack has not occurred but recognizes that there may be some dispute concerning this conclusion, he should keep available for public inspection, for a reasonable period of time, a tape, transcript or summary of the broadcast in question.

[8]Where the attack occurs on paid time, a question has arisen as to whether the response can also be required to be on paid time. We have ruled on this matter in *Letter to John H. Norris (WGCB), aff'd sub nom., Red Lion Broadcasting Co., Inc.* v. *F. C. C., supra.* In view of our ruling, this is a matter not covered by the rule.

and not the personal attack principle—is usually applicable to this situation. The Fairness Doctrine may, of course, be applicable to particular factual situations in the political broadcast field. See, Section 315(a) of the Communications Act of 1934, as amended, 47 U. S. C. 315(a); Public Notice of July 1, 1964, *Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance,* 29 F. R. 10415 (1964).

14. Finally, subsection (c) of the rule clarifies licensee's obligations in regard to station editorials endorsing or opposing political candidates. The appropriate candidate (or candidates) must be informed of a station's editorial opposing his (or their) candidacy or supporting the candidacy of a rival, and must be offered a reasonable opportunity to respond through a spokesman of his choice including, if the licensee so agrees, himself. The language of subsection (c) has been altered from that appearing in the Notice of Proposed Rule Making (FCC 66-291) to make clear that where an editorial endorses a candidate notice and offer of an opportunity to respond must be sent to his opponent, and where an editorial opposes a candidate such notice and offer must be sent to the opposed candidate.

15. The phrase "reasonable opportunity" to respond is used here and in the personal attack subsection because such an opportunity may vary with the circumstances. In many instances a comparable opportunity in time and scheduling will be clearly appropriate; in others such as where the endorsement of a candidate is one of many and involves just a few seconds, a "reasonable opportunity" may require more than a few seconds if there is to be a meaningful response. See, *Final Report of the Senate Committee on Commerce,* S. Rep. No. 944, 87th Cong., 2d Sess., Part 6,

page 7. Notification shall be within 24 hours of the editorial, since time is of the essence in this area and there appears to be no reason why the licensee cannot immediately inform a candidate of an editorial. In most cases licensees will be able to give notice prior to the editorial. Indeed such prior notice is required in instances of editorials broadcast close to the election date, i.e. less than 72 hours before the day of the election. For while such last-minute editorials are not prohibited, we wish to emphasize as strongly as possible that such editorials would be patently contrary to the public interest and the personal attack principle unless the licensee insures that the appropriate candidate (or candidates) is informed of the proposed broadcast and its contents sufficiently far in advance to have a reasonable opportunity to prepare a response and to have it presented in a timely fashion. We have accordingly made this requirement explicit in a proviso to subsection (c).

16. As in the case of the personal attack subsection, the licensee may impose reasonable limitations on the reply, such as requiring the appearance of a spokesman for the candidate to avoid any Section 315 "equal opportunities" cycle.[9] The matter of scheduling responses is left to reasonable judgment and negotiation. Subsection (c) is directed only to station editorials endorsing, or opposing, political candidates. Situations containing aspects of both personal attacks and political endorsements or oppositions may arise, and in such cases rulings on the particular factual settings may be necessary. *Times-Mirror*, 24 Pike & Fischer, R. R. 404 and 407 (1962).

17. Authority for the rules herein adopted is contained in Section 4 (i) and (j), 303 (r) and 315 of the Communications Act of 1934, as amended.

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[9]Barring extraordinary circumstances, the choice of the spokesman is, of course, a matter for the candidate involved.

Appendix A

18. Accordingly, IT IS ORDERED,

that the rules contained in the attached appendix ARE ADOPTED, effective August 14, 1967.

FEDERAL COMMUNICATIONS COMMISSION*

Ben F. Waple
Secretary

Attachment

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*See attached statements of Commissioners Bartley and Loevinger.
NOTE: Rules changes herein will be covered by T. S. III(64)-18.

Appendix A

APPENDIX

In Part 73 §§ 73.123, 73.300, 73.598 and 73.679 all to read identically are added to read as follows:

Personal attacks; political editorials.

(a) When, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than one week after the attack, transmit to the person or group attacked (1) notification of the date, time and identification of the broadcast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) an offer of a reasonable opportunity to respond over the licensee's facilities.

(b) The provisions of paragraph (a) of this section shall be inapplicable to attacks on foreign groups or foreign public figures or where personal attacks are made by legally qualified candidates, their authorized spokesmen, or those associated with them in the campaign, on other such candidates, their authorized spokesman, or persons associated with the candidates in the campaign.

Note: In a specific factual situation, the fairness doctrine may be applicable in this general area of political broadcasts. See, Section 315(a) of the Act (47 U. S. C. 315(a)); Public Notice: *Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance.* 29 Fed. Reg. 10415.

(c) Where a licensee, in an editorial, (i) endorses or (ii) opposes a legally qualified candidate or candidates, the licensee shall, within 24 hours after the editorial, transmit to respectively (i) the other qualified candidate or candidates for the same office or (ii) the candidate opposed in the editorial (1) notification of the date and the time of the editorial; (2) a script or tape of the editorial; and (3) an offer of a reasonable opportunity for a candidate or a spokesman of the candidate to respond over the licensee's facilities: *Provided, however,* That where such editorials are broadcast within 72 hours prior to the day of the election, the licensee shall shall comply with the provisions of this subsection sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to prepare a response and to present it in a timely fashion.

Appendix A

DISSENTING STATEMENT

OF

COMMISSIONER ROBERT T. BARTLEY

The Fairness Doctrine is in the process of being perfected on a case-by-case basis. I believe, therefore, that codification by rule is premature.

Appendix A

Concurring Opinion of Commissioner Lee Loevinger

(Re rule to provide procedure in case of personal attack, etc.)

I concur in the promulgation of a rule specifically providing for the right of reply by a person attacked in a broadcast and by political candidates disadvantaged by poiltical broadcasts, as this seems correct in principle. However, I think that the rule would better achieve its purpose if it were drafted with a clearer delineation of scope and practical operation.

Appendix B

B
FCC 67-923
4019

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

IN THE MATTER OF	
Amendment of Part 73 of the Rules to provide procedures in the event of a personal attack or where a station editorializes as to political candidates.	Docket No. 16574

MEMORANDUM OPINION AND ORDER

Adopted: August 2, 1967 Released: August 7, 1967
By the Commission:

Commissioners Bartley, Loevinger and Wadsworth absent; Commissioner Cox concurring in the result.

1. On July 5, 1967, the Commission adopted rules specifying procedures in the event of certain personal attacks and where a station editorializes as to political candidates. In subsection (b) of those rules, we exempted certain situations where the fairness doctrine generally, rather than the personal attack rule, may be applicable. In the processing of a recent complaint, we have become aware of a further instance where clarification of our rules is appropriate.

Appendix B

2. Specifically, the personal attack rule is inapplicable to the bona fide newscast or on-the-spot coverage of a bona fide news event. In these situations the general fairness doctrine is applicable, and licensees are required to make reasonable good faith judgments upon the particular facts of the case in accordance with that doctrine. See Section 315(a) of the Communications Act of 1934, as amended; *Applicability of the Fairness Doctrine In The Handling Of Controversial Issues of Public Importance,* 29 F. R. 10416. Thus, licensees must make good faith, journalistic judgments as to what is newsworthy and how it should be presented. If the licensee adjudges an event containing a personal attack to be newsworthy, in practice he usually turns, as part of the news coverage to be presented that day or in the very near future, to the other side and again makes the same good faith journalistic judgment as to its presentation and what fairness requires in the particular circumstances. That is normal journalism and fairness in this area. To import the concept of notification within a week period, with a presentation of the person attacked on some later newscast when other news might normally be broadcast, is impractical and might impede the effective execution of the important news functions of licensees or networks. Such a result is not intended under the rules adopted. Finally, the exemption is also being extended to on-the-spot coverage of a bona fide news event, since this category is akin to the newscast area; in this connection, we have also taken into account the consideration that the number of personal attacks occurring in on-the-spot coverage of bona fide news events is unlikely to be large in number, that the notification aspect is relatively less needed in this area, and that on the whole it can be administered readily by applying the fairness doctrine to the specific facts of each case, when and if disputes arise.

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3. The exemption resulting from the above clarification does not extend, however, to editorials or similar commentary, embodying personal attacks, broadcast in the course of the newscasts. The foregoing considerations are inapplicable. Rather, since the licensee has chosen to present a personal attack in his editorial, he should not be the one to determine wholly what the public shall or shall not hear on the other side of a matter affecting the integrity, honesty, and like personal qualities of the person attacked. Under elemental fairness, the person attacked should be afforded a comparable opportunity to give that side, subject to reasonable conditions set by the licensee. See, e.g., Letter to *Station WALG,* FCC 65-50 (1965). More important, the person attacked is the most appropriate spokesman to inform the public of the other side of the attack issue. As noted, the time and practical considerations discussed with respect to the news itself in par. 2, are not usually applicable to an editorial, and even if applicable in an attenuated form, are outweighed by the foregoing factors. Finally, the argument that this might impede the presentation of editorials containing personal attacks is simply an assertion by the licensee that he wishes to broadcast such an editorial, but only if he does not have to present the other side of the attack issue or if he can wholly control what the public may hear concerning this other side, rather than permitting the person so vitally affected by his editorial and with the most knowledge of the issue a reasonable opportunity to reach his listeners.[1]

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[1]For similar reasons, we have not exempted news documentaries. We note that the latter ordinarily do not involve the time and practical considerations discussed in par. 2, and that a documentary, even though fairly presented, may necessarily embody a point of view. We believe, therefore, that the person attacked can readily, and should be, afforded the reasonable opportunity to present his side,

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4. It may be that experience will indicate the need or desirability of other revisions, clarifications, or waivers of the rule in particular factual situations. If so, we shall act promptly to make whatever changes the public interest in the larger and more effective use of radio requires. See, e.g., Section 4(b), Administrative Procedure Act. We stress again the purpose of the rules: To delineate better the licensee's responsibilities in this important area and to afford the Commission a further needed sanction to deal with those who flagrantly violate the underlying policies in situations where there is no reasonable question as to the licensee's responsibility.

5. Authority for the rules herein adopted is contained in Section 4 (i) and (j), 303 (r) and 315 of the Communications Act of 1934, as amended; see also, Section 1.108 of the Commission's Rules and Regulations.

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as the most appropriate spokesman to inform the public on a matter affecting his integrity, etc.

Similarly, the news interviews show, which is akin to many other talk programs, is not exempted. The licensee has chosen to provide one person with an "electronic platform" for an attack, and elemental fairness and the duty to inform the public in the most appropriate manner, dictate that he should afford the person attacked a comparable opportunity. Again, the consideration set forth in par. 2 are inapplicable.

Finally, we note that there are already certain exemptions where the attacks are made by legally qualified candidates, their authorized spokesmen, or those associated with them in the campaign, on other such candidates, their authorized spokesmen, or persons associated with the candidates in the campaign.

Appendix B

6. Accordingly, IT IS ORDERED, that the rule revision contained in the attached appendix ARE ADOPTED, effective August 14, 1967. See Section 4(c), Administrative Procedure Act. This proceeding is terminated.

FEDERAL COMMUNICATIONS COMMISSION

BEN F. WAPLE
Secretary.

Attachement

NOTE: Rules changes herein will be included in a revised edition of Volume III.

Appendix B

APPENDIX

In Part 73 of Chapter I of Title 47 of the Code of Federal Regulations, §§ 73.123(b), 73.300(b), 73.598(b) and 73.679(b) are revised to read identically as set forth in § 73.123 below:

§ 73.123 Personal attacks; political editorials.

* * * * *

(b) The provisions of paragraph (a) of this section shall be inapplicable (i) to attacks on foreign groups or foreign public figures; (ii) where personal attacks are made by legally qualified candidates, their authorized spokesmen, or those associated with them in the campaign, on other such candidates, their authorized spokesmen, or persons associated with the candidates in the campaign; and (iii) to bona fide newscasts or on-the-spot coverage of a bona fide news event (but the provision shall be applicable to any editorial or similar commentary included in such newscasts or on-the-spot coverage of news events).

NOTE: The fairness doctrine is applicable to situations coming within (iii), above, and, in a specific factual situation, may be applicable in the general area of political broadcasts (ii), above. See, Section 315(a) of the Act, 47 U. S. C. 315(a); Public Notice: *Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance.* 29 Fed. Reg. 10415.

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Appendix C

First Amendment, United States Constitution:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Communications Act of 1934, as amended:

Sec. 315:

> "(a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided,* That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any—
>
> (1) bona fide newscast,
>
> (2) bona fide news interview,
>
> (3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or
>
> (4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto),

shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this chapter to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

(b) The charges made for the use of any broadcasting station for any of the purposes set forth in this section shall not exceed the charges made for comparable use of such station for other purposes.

(c) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section. (47 U. S. C., 1964 ed., Sec. 315.)"

Sec. 326:

"Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication. (47 U. S. C., 1964 ed., Sec. 326.)"

Judicial Code:

Sec. 1254(1):

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

Appendix C

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; . . ." (28 U. S. C., 1964 ed., Sec. 1254(1))

Rule 20 of the Rules of this Court:

"A writ of certiorari to review a case pending in a court of appeals, before judgment is given in such court, will be granted only upon a showing that the case is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement in this court. See *United States* v. *Bankers Trust Co.*, 294 U. S. 240; *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330; *Rickert Rice Mills* v. *Fontenot*, 297 U. S. 110; *Carter* v. *Carter Coal Co.*, 298 U. S. 238; *Ex parte Quirin*, 317 U. S. 1; *United States* v. *United Mine Workers*, 330 U. S. 258; *Youngstown Co.* v. *Sawyer*, 343 U. S. 579."